



STATE OF NEWJERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
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www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE PETITION OF THE)
MID-ATLANTIC SOLAR ENERGY INDUSTRIES)
ASSOCIATION TO TERMINATE THE CLEAN)
ENERGY TRUST FUND AND RETURN)
SBC FUNDS TO THE UTILITIES)
)

ORDER

DOCKET NO. EO11070464V

Parties of Record:

R. William Potter, Mid-Atlantic Solar Energy Industries Association

Stefanie A. Brand, Director, Division of Rate Counsel

BY THE BOARD:

The Mid-Atlantic Solar Energy Industries Association ("MSEIA") filed a petition with the Board requesting the Board to remove Societal Benefits Charge ("SBC") funds from the Treasury-administered Clean Energy Trust Fund ("CETF") and direct the utilities to collect, manage and disburse the SBC for approved clean energy initiatives.

Background

On February 11, 2010, the Governor issued Executive Order 14 ("EO 14"), which directed the Director of the Division of Budget and Accounting ("Director") to exercise her power under N.J.S.A. 52:27B-26 and place items of appropriation into reserve. The Director placed into reserve approximately \$550 million in unspent balances in various funds, including \$158 million in the CETF. The purpose of these reserves was to ensure that a balanced budget for FY 2010 was maintained and to allow the State to begin the new fiscal year with an adequate surplus.

The State's economy continued to trend downward during the third and fourth quarters of FY 2010. The Legislature therefore found it necessary to pass a Supplemental Appropriations Act. See L. 2010, c. 19. In the Supplemental Appropriations Act, the Legislature amended "various language provisions affecting appropriations." Under the title "General Language Provisions

affecting Appropriations and Revenues,” the Legislature authorized, “subject to the approval of the Director of the Division of Budget and Accounting,” the transfer to the General Fund an amount “not in excess of” \$369.9 million. This \$369.9 million represented the “surplus balances” of five funds and included “up to” \$158 million from the Clean Energy Trust Fund. On June 29, 2010, the 2010 Supplemental Appropriations Act became law, L. 2010, c.19 and the Director effectuated this transfer on June 30, 2010.

Consistent with EO 14, on April 21, 2010, the Board adopted a revised budget which accounted for an anticipated loss of \$158 million from the CETF. In re Comprehensive EE and RE Resource Analysis for the 2009-2012: 2010 Programs and Budgets: Revised 2010 Budgets, Docket No. EO07030203 (April 21, 2010). On June 21, 2010, the Board adopted another revised clean energy budget, which continued to reflect a reduction of \$158 million. In re Comprehensive EE and RE Resource Analysis for the 2009-2012: 2010 Programs and Budgets: Revised 2010 Budgets, Docket No. EO07030203 (June 21, 2010).

In total, MSEIA filed four appeals: one challenging EO 14; one challenging each of BPU’s two revised budgets; and one challenging the Supplemental Appropriations Act. The Appellate Division consolidated the four appeals and published its opinion March 4, 2011. Mid-Atlantic Solar Energy Indus. Assoc. v. Chris Christie, 418 N.J. Super. 499 (App. Div.), certif. denied, 207 N.J. 190 (2011).

The Appellate Division held that the transfer of funds from the CETF to the General Fund was valid pursuant to the Supplemental Appropriations Act, L. 2010, c.19. The court also noted that “the money in the Clean Energy Fund is deposited into the State Treasury in conformity with N.J.S.A. 52:18-29 and appropriated for its designated purposes[.]” Id. at 506. MSEIA now petitions the Board to cease depositing the SBC into the State Treasury and direct the utilities to hold the SBC in an escrow account, in order to defend against potential future legislative action that would transfer such funds from the CETF into the General Treasury.

Societal Benefits Charge

The Electric Discount and Energy Competition Act (“EDECA”), N.J.S.A. 48:3-49 et seq. was signed into law on February 9, 1999. EDECA directed the Board to initiate a comprehensive resource analysis (“CRA”) of energy programs to determine the appropriate level of funding and the level of cost recovery for energy efficiency and Class 1 renewable energy programs. EDECA also authorized the Board to determine the SBC that utilities would collect from customers to fund the energy efficiency (“EE”) and renewable energy (“RE”) programs. N.J.S.A. 48:3-60(a).

As required by EDECA, in 1999 the Board initiated its first comprehensive EE and RE resource analysis proceeding. At the conclusion of this proceeding, the Board issued its initial comprehensive resource analysis order, dated March 9, 2001, Docket Nos. EX99050347 et al. (hereinafter referred to as the March 9th Order). Among other things, the March 9th Order directed the utilities to submit a Program Compliance Filing that included detailed program descriptions and budgets for EE and RE programs.

The seven electric and gas utilities jointly submitted Compliance Filings on April 9, 2001, and the Board ultimately approved the utilities to administer such programs by Order dated August 15, 2001. The portfolio of EE and RE programs was eventually named the New Jersey Clean Energy Program (“CEP”).

When the Board approved the CEP, it held concerns about how the CEP should be managed. The Board subsequently retained a consultant and solicited input of stakeholders to facilitate enquiry into proper administration of the CEP. The Board and Board Staff conducted public hearings, received testimony and written comments, and participated in meetings with interested parties. In an Order dated January 22, 2003, the Board also established the New Jersey Clean Energy Council (the "Council") to provide guidance on issues related to the CEP, including proper program administration.

The Council issued a report titled the "New Jersey Clean Energy Program: Recommendations for Administration and Fund Management" on July 21, 2003. The report made recommendations to the BPU regarding administration of the CEP and management of program funds. It specifically recommended that the Board assume responsibility for program administration and transfer such function from the utilities. The Council also recommended that the Board establish an account to manage funds related to the CEP.

In an Order dated September 11, 2003, the Board adopted the Council's recommendations and directed the Office of Clean Energy to administer the Clean Energy Program after an adequate transition period. In the Matter of the New Jersey Clean Energy Program – Recommendations for Administration and Fund Management, Docket No. EO02120955 (September 11, 2003) ("September 2003 Order"). The Board also authorized Staff to contract with program managers to implement the CEP and perform related administrative functions. Id. Currently, the State administers all but two of the EE and RE programs. The utilities administer the other two programs.

To manage the CEP funds, including the SBC, the Board entered an interdepartmental agreement ("IDA") with Treasury in 2005 to create the Clean Energy Program Trust Fund (CETF). The IDA also designated Treasury as the BPU's fiscal agent. Funds within the CETF, including a portion of the SBC, are deposited into the State Treasury pursuant to N.J.S.A. 52:18-29. The portion of the SBC that is not deposited into the CETF is retained by the utilities to recoup their costs related to the CEP programs that they administer.

Discussion and Findings

The Board, in its reasonable exercise of discretion, has already determined that the BPU Office of Clean Energy should administer the CEP. The Board reached this decision in 2003 after receiving recommendations from the Council and stakeholder groups, and after extensive analysis of relevant issues, including but not limited to, conflict of interest, program goals, accountability and oversight, administrative efficiency, cost effectiveness, and other considerations.

The September 2003 Order adopted the recommendation of the Council for the OCE to become the new program administrator. "The Clean Energy Council made this recommendation because it most directly and effectively aligns the interests of the administrator with those of the policy-making entity for the Clean Energy Program. In addition, NJBPU Office of Clean Energy administration also offers the most direct accountability and oversight for the Clean Energy Programs." September 2003 Order, at 4. The September 2003 Order remains in effect and the Board has found no reason to revisit it.

As long as the OCE continues to administer any portion of the Clean Energy Program, the funds which support these programs must be deposited in an account that is in the State Treasury. N.J.S.A. 52:18-29 ("[a]ll moneys of the state collected or received by any state institution, board,

commission, department, committee, agent or servant, from any source, shall except as otherwise provided by law be paid into the state treasury"); see N.J.S.A. 52:18A-8.1(a) (authorizing the Office of Management and Budget to open and manage bank accounts); Treasury Circular 00-12-OMB (designating OMB to open and manage bank accounts). The Board does not have any discretion in this regard and must adhere to statutory authority and Treasury guidance related to the management of State funds.

Nonetheless, MSEIA suggests that the Board has not safeguarded the SBC from the risk of being swept into the State Treasury General Fund and, therefore, should terminate the IDA with Treasury and cease depositing the SBC into the CETF. We disagree. The SBC is collected consistent with the BPU's authority under EDECA, deposited into the State Treasury in accordance with applicable law, and appropriated for its designated purpose.

Moreover, the Appellate Division already decided this issue in MSEIA's appeal of EO 14 and the Supplemental Appropriations Act. The court explained that BPU properly deposits the SBC in the CETF that Treasury manages; and, the Legislature has the authority to designate the purpose and transfer such funds into the General Fund through an Appropriations Act.

[T]he money in the Clean Energy Fund is deposited into the State Treasury in conformity with N.J.S.A. 52:18-29 and appropriated for its designated purposes through section two of the Annual Appropriations Acts, which provide in pertinent part: "All dedicated funds are hereby appropriated for their dedicated purposes."

* * *

[T]he fact that the Legislature has authorized [the SBC's] collection and directed the purposes to which it may be allocated means that the Legislature retains the authority to change those permitted purposes. Moreover, the authorization to transfer money into the General Fund is directly related to one of the basic purposes of an Annual Appropriations Act, which is to assure that there is adequate money to fund the appropriations provided thereunder.

[Mid-Atlantic Solar Energy Indus. Assoc., 418 N.J. Super. at 506-07 (internal citations omitted).]

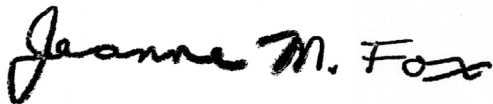
For these reasons, terminating the IDA would not terminate BPU's statutory obligation to deposit the SBC into a Treasury account.

Therefore, the Board **FINDS** that the September 2003 Order and the IDA remain in full force and effect. The Board **FINDS** that the statutory fiscal obligations of the BPU are not limited to the terms of the IDA and that the Board must comply with applicable law and Treasury Circulars regarding management of State funds. Further, the Board **FINDS** that MSEIA's requested relief requires legislative amendments beyond the Board's authority. Therefore, MSEIA's petition is **HEREBY DISMISSED** for failure to state a claim upon which relief can be granted.


DATED: 11/16/11

BOARD OF PUBLIC UTILITIES
BY:


LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER

ATTEST: 
KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
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Utilities



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ASSOCIATION TO TERMINATE THE CLEAN ENERGY TRUST FUND AND RETURN
SBC FUNDS TO THE UTILITIES

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